

## Message Text

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C - MR. BLACKWILL

EUR/CE - MR. LEDSKY

EUR/CE - MR. GEORGE

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S/S: MR. FRY

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TO USMISSION BERLIN PRIORITY

AMEMBASSY BONN PRIORITY

INFO AMEMBASSY MOSCOW

USMISSION NATO

AMEMBASSY PARIS

AMEMBASSY LONDON

C O N F I D E N T I A L STATE 157497

E.O. 11652: GDS

TAGS: PFOR, GE

SUBJECT: US/GDR NEGOTIATIONS: DRAFT UNDERSTANDING

1. SUMMARY. DURING LAST TWO DAYS, US AND GDR DELEGATIONS HAVE EXCHANGED IDEAS AND FORMULATIONS ON CONTENT OF WRITTEN UNDERSTANDING. GDR HAS NOW TRANSMITTED FULL TEXT TO BERLIN FOR FOREIGN MINISTRY COMMENT AND EXPECTS REPLY BY MONDAY WHEN NEGOTIATIONS WILL BE RESUMED. END SUMMARY.

2. TEXT OF DRAFT WITH COMMENTARY ON STATUS OF INDIVIDUAL CONFIDENTIAL

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SECTIONS AND SUMMARY OF DISCUSSION FOLLOWS BELOW.

3. FIRST PARAGRAPH. ONLY CONTROVERSIAL PART OF INITIAL PARAGRAPH WAS SECOND SENTENCE, WHICH HAS GONE THROUGH

SEVERAL FORMULATIONS. FIRST AND THIRD SENTENCES ARE FROM US DRAFT AND HAVE BEEN TENTATIVELY ACCEPTED BY GDR. PARAGRAPH IN ITS PRESENT FORM READS: BEGIN TEXT. THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC HAVE AGREED TO ESTABLISH DIPLOMATIC RELATIONS, IN ACCORDANCE WITH THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS OF 1961. IN ADDITION TO THE PROVISIONS CONTAINED IN THE CONVENTION, BOTH SIDES HAVE AGREED THAT ON THE BASIS OF RECIPROCITY, THEY SHALL ACCORD SENDING STATE NATIONALS ON THE ADMINISTRATIVE AND TECHNICAL STAFFS OF THEIR RESPECTIVE DIPLOMATIC MISSIONS

AND THEIR FAMILIES FULL DIPLOMATIC PRIVILEGES AND IMMUNITIES. IN THE CONDUCT OF THEIR RELATIONS, THE TWO GOVERNMENTS WILL ACT IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS. END TEXT.

4. SECOND PARAGRAPH. US INITIALLY TABLED LANGUAGE ON ACCESS TO MISSION FACILITIES FOR PUBLIC WHICH WAS DESIGNED TO OFFSET POSSIBLE NEGATIVE EFFECT OF GDR REGULATION OF 1963. OUR PROPOSAL READ: "THE TWO STATES AGREED THAT THE PUBLIC SHALL HAVE UNRESTRICTED ACCESS TO THE RESPECTIVE CHANCERIES AND TO THE OFFICIAL OFFICES ESTABLISHED BY THE TWO GOVERNMENTS, AS WELL AS TO SPECIFIC EVENTS ORGANIZED BY THEM. CONTACTS WITH US DIPLOMATIC AND CONSULAR STAFFS IN A SOCIAL OR UNOFFICIAL CONTEXT SHALL NOT BE RESTRICTED IN ANY WAY AND SHALL NOT BE DEEMED TO BE CONTACT WITH A FOREIGN MISSION OR REPRESENTATION FOR THE PURPOSES OF ANY LAW REGULATING CONTACTS. GDR OBJECTED, EXPLAINING IT COULD NOT ACCEPT LANGUAGE WHICH WOULD BE CONTRARY TO EXISTING REGULATIONS. TWO DELEGATIONS THEN DEVELOPED THIS FORMULATION WHICH REMAINS BASIS FOR DISCUSSION: BEGIN TEXT. THE TWO GOVERNMENTS AGREED THAT THERE IS TO BE UNIMPEDED ACCESS TO THEIR RESPECTIVE MISSIONS, AND OTHER ESTABLISHMENTS AS WELL AS TO SPECIFIC EVENTS ORGANIZED BY THEM ON THE MOST FAVORABLE CONDITIONS ENJOYED BY ANY OTHER FOREIGN MISSION ACCREDITED TO THEM. END CONFIDENTIAL

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TEXT.

COMMENT. GDR HAS ON SEVERAL OCCASIONS STATED THAT GDR PRACTICE IS MUCH LESS RESTRICTIVE THAN THE 1963 REGULATION AND THAT US DIPLOMATS WILL BE FREE TO HAVE PERSONAL AS WELL AS OFFICIAL CONTACTS WITH GDR NATIONALS BOTH IN THEIR HOMES AND IN OFFICIAL BUILDING. REDUCING ACCESS PRINCIPLE TO WORDS HAS PROVED DIFFICULT, BECAUSE GDR MAINTAINS IT CANNOT IN WRITING GRANT US TREATMENT IDENTICAL TO THAT ENJOYED BY ITS WARSAW PACT ALLIES. TO CIRCUMVENT THIS PROBLEM, GDR SUGGESTED AMENDMENT OF LAST PHRASE TO READ "ON THE SAME FAVORABLE CONDITIONS AS THOSE ENJOYED BY ALL OTHER FOREIGN MISSIONS ACCREDITED TO THEM".

5. THIRD PARAGRAPH. AS EXPECTED, INTERIM CONSULAR ARRANGEMENT HAS PROVED DIFFICULT TO AGREE UPON. GDR HAS STATED THAT IT IS WILLING TO COMMENCE NEGOTIATION ON COMPLETE CONSULAR AGREEMENT AT AN EARLY DATE. WHILE INITIALLY WILLING TO MENTION VIENNA CONSULAR CONVENTION AS BASIS OF INTERIM ARRANGEMENT, GDR NOW SAYS INSTRUCTIONS FROM BERLIN PUT THIS POINT IN DOUBT. PARAGRAPH NOW READS AS FOLLOWS: BEGIN TEXT. THE TWO GOVERNMENTS AGREED PENDING THE ENTRY INTO FORCE OF A COMPREHENSIVE CONSULAR AGREEMENT, THAT

THEIR CONSULAR RELATIONS WILL BE BASED ON THE VIENNA CONVENTION ON CONSULAR RELATIONS, (BEGIN GDR BRACKETS) WHICH THEY REGARD AS THE CODIFICATION IN MOST MATERIAL RESPECTS OF CUSTOMARY INTERNATIONAL LAW ON CONSULAR RELATIONS (END GDR BRACKETS). THEY WILL SEEK TO FACILITATE AND PROVIDE THE MOST FAVORABLE CONDITIONS FOR THE PERFORMANCE OF CONSULAR FUNCTIONS BY EACH OTHER'S CONSULAR ESTABLISHMENTS. IN PARTICULAR THEY WILL IN NO WAY IMPEDE (BEGIN GDR BRACKETS) (1) THE ACCESS TO THE SENDING STATE CONSULAR ESTABLISHMENT OF ANY PERSON WITH CONSULAR BUSINESS AND (2) (END GDR BRACKETS) THE MUTUAL ACCESS AND COMMUNICATION OF SENDING STATE CITIZENS AND SENDING STATE CONSULAR OFFICIALS. IN CASE A SENDING STATE CITIZEN IS DEPRIVED IN ANY WAY OF HIS PERSONAL LIBERTY, THE SENDING STATE CONSULAR ESTABLISHMENT SHALL BE NOTIFIED AND GIVEN ACCESS TO SUCH PERSONS AS SOON AS POSSIBLE. (BEGIN GDR BRACKETS) THEY WILL SEEK TO ACCOMMODATE THE INTEREST OF THE SENDING CONFIDENTIAL

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STATE WITH REGARD TO PROTECTION OF DUAL NATIONALS (END GDR BRACKETS). NEGOTIATIONS SHALL BEGIN ON OCTOBER 1, 1974 FOR THE CONCLUSION OF A COMPREHENSIVE CONSULAR AGREEMENT, BASED ON THE ABOVE PRINCIPLES AND WITHOUT PREJUDICE TO (BEGIN GDR BRACKETS) MORE FAVORABLE (END GDR BRACKETS) OR MORE CONCRETE TREATMENT OF SPECIFIC PROVISIONS CONTAINED IN THE VIENNA CONVENTION ON CONSULAR RELATIONS. END TEXT. COMMENT: GDR REJECTED US SUGGESTION OF 48 HOURS NOTIFICATION OF DETENTION AND 96 HOUR RIGHT TO CONSULAR ACCESS, BUT EMPHASIZED THAT "AS SOON AS POSSIBLE" MEANT WITHOUT UNNECESSARY DELAY. GDR REP ALSO QUESTIONED WHETHER US ABLE TO FULFILL THIS REQUIREMENT IF GDR CITIZEN ARRESTED IN AREA WHERE POLICE NOT ACCUSTOMED TO DEALING WITH FOREIGNERS. GDR MAINTAINED THAT FINAL BRACKETED LANGUAGE IN THIS PARAGRAPH WAS SUPERFLUOUS. US STATED WILLINGNESS TO CONSIDER DELETION OF LANGUAGE IN FIRST GDR BRACKET IF GDR COULD ACCEPT LANGUAGE ALONG FOLLOWING LINES: "THESE ARRANGEMENTS WILL BE APPLIED TO THE FULLEST EXTENT POSSIBLE IN VIEW OF THE ABSENCE OF A CONSULAR TREATY BETWEEN THEM". US EXPLAINED THAT THIS WOULD SATISFY EXECUTIVE BRANCH LEGAL INABILITY TO APPLY VIENNA CONVENTION AS TREATY BETWEEN US AND GDR.

6. FOURTH PARAGRAPH. THE FIRST TWO SENTENCES PROPOSED BY US, HAVE BEEN AGREED AD REFERENDUM. THE LAST TWO SENTENCES REPRESENT A REVISED VERSION OF AN EARLIER US SUBMISSION WHICH READ: "LOCAL EMPLOYEES MAY BE OF ANY NATIONALITY AND MAY RESIDE IN ANY CONVENIENT PLACE". THE GDR SAID NO WEST GERMANS AND WEST BERLINERS COULD WORK IN OUR EMBASSY, BUT THAT OTHER NATIONALS AND US CITIZENS, EVEN THOSE LIVING IN

WEST BERLIN, WERE ACCEPTABLE. OUR TEXT WAS ACCORDINGLY REVISED AS FOLLOWS: BEGIN TEXT. THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC WILL FACILITATE THE ESTABLISHMENT OF EMBASSIES WHICH WILL OPEN ON THE SAME DATE. THE TWO GOVERNMENTS UNDERTAKE TO KEEP THE NUMBER OF THEIR EMBASSY PERSONNEL IN BALANCE. BOTH SIDES AGREED THAT CITIZENS OF THE RECEIVING STATE AND, WITH PRIOR NOTIFICATION, CITIZENS OF OTHER STATES MAY BE EMPLOYED ON THE ADMINISTRATIVE, TECHNICAL AND DOMESTIC STAFF OF THEIR DIPLOMATIC MISSIONS. (BE-CONFIDENTIAL

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GIN GDR BRACKETS) CITIZENS OF THESE OTHER STATES MAY RESIDE AT ANY CONVENIENT PLACE (END GDR BRACKETS). FOR ITS PART, THE GDR WILL ENDEAVOR TO MAKE LOCAL STAFF AVAILABLE THROUGH THE SERVICE AGENCY FOR FOREIGN MISSIONS. END TEXT. COMMENT. US REP STATED THAT WORDS "WITH PRIOR NOTIFICATION" WERE INTENDED TO MEET GDR REQUIREMENTS WITHOUT LANGUAGE WHICH WOULD DISCRIMINATE AGAINST ANY PARTICULAR GROUP. US WOULD NOT "NOTIFY" GDR OF FRG OR BERLIN RESIDENTS AND GDR WOULD NOT OBJECT TO ANY OTHER PERSONS. US MADE CLEAR IT WISHED TO EMPLOY DEPENDENTS OF US FORCES MEMBERS AND OTHER AMERICANS OR ENGLISH SPEAKING PERSONS LIVING IN WEST BERLIN.

7. FIFTH PARAGRAPH. ADMINISTRATIVE TALKS, BEING CONDUCTED SEPARATELY FROM SUBSTANTIVE NEGOTIATIONS, HAVE NOT PROGRESSED TO POINT WHERE LANGUAGE QUOTED BELOW CAN BE CONSIDERED MORE THAN PRELIMINARY. TEXT IS BASED ON US DRAFT. GDR DELEGATION SUGGEST JULY 19 THAT LANGUAGE BE RECAST TO INCLUDE CONCEPT OF RECIPROCITY. CURRENT DRAFT READS: BEGIN TEXT. THE TWO GOVERNMENTS WILL RENDER ALL NECESSARY ASSISTANCE IN CARRYING OUT NECESSARY REMODELING FOR THE OFFICES AND RESIDENCES TO BE UTILIZED BY THE TWO SIDES. THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC HAS EXPRESSED ITS UNDERSTANDING THAT FOR THE CONSTRUCTION, REMODELING AND MAINTENANCE OF PROPERTY UTILIZED BY THE AMERICAN EMBASSY, INCLUDING STAFF HOUSING, PERSONNEL MAY BE UTILIZED WHO WILL NOT BE ON THE REGULAR STAFF OF THE AMERICAN EMBASSY. WORK PERMITS FROM LOCAL GERMAN AUTHORITIES WILL NOT BE REQUIRED FOR THIS PURPOSE. END TEXT.

8. SIXTH PARAGRAPH. IN ADMINISTRATIVE DISCUSSIONS US HAS TABLED TEXTS OF PROPOSED EXCHANGE OF LETTERS (SIMILAR TO FRENCH/GDR EXCHANGE) ON PARISER PLATZ PROPERTY. PLENARY HAS NOT YET DEALT WITH THIS ISSUE IN DETAIL. PROPOSED US TEXT: BEGIN TEXT. THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC CONFIRMS THAT ITS ADMINISTRATION OF THE SITE AT

PARISER PLATZ 2, WHICH IS AMERICAN PROPERTY, WILL BE RETURNED TO THE UNITED STATES ON THIS DATE. THE USE OF THIS SITE IS THE SUBJECT OF AN EXCHANGE OF LETTERS ON THIS DATE  
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BETWEEN THE HEADS OF THE TWO DELEGATIONS. END TEXT.

9. PARAGRAPH SEVEN. TO ENSURE ADEQUATE COMMUNICATIONS, US HAS PROPOSED SEPARATE PROTOCOL ON TELECOMMUNICATIONS. PLENARY HAS NOT YET DISCUSSED THIS ISSUE. TEXT OF PROPOSED PARAGRAPH FOR WRITTEN UNDERSTANDING FOLLOWS: BEGIN TEXT. A SEPARATE TECHNICAL PROTOCOL HAS BEEN CONCLUDED ON THE COMMUNICATIONS FACILITIES THE RESPECTIVE DIPLOMATIC MISSIONS WILL ENJOY. END TEXT. COMMENT. TEXT OF PROTOCOL HAS NOT BEEN AGREED BUT OUTSTANDING DIFFERENCES HAVE BEEN NARROWED.

10. PARAGRAPH EIGHT. BOTH SIDES HAVE AGREED TO PRINCIPLE OF FREE TRAVEL, WITH EXCEPTION OF AREAS RESERVED FOR USE BY MILITARY FORCES. PARAGRAPH READS: BEGIN TEXT. TRAVEL BY MEMBERS OF THE RESPECTIVE MISSIONS WILL BE WITHOUT IMPEDIMENT. THEY ARE FREE TO ENTER AND DEPART AT ANY POINT CUSTOMARILY UTILIZED BY TRAVELLERS. END TEXT.

11. PARAGRAPH NINE. PLENARY SESSION HAS DEALT ONLY CURSORILY WITH TEXT OF THIS PARAGRAPH WHICH IS A COMPOSITE DRAWN FROM US AND GDR DRAFTS. CURRENT VERSION READS: BEGIN TEXT. THE UNITED STATES AND THE GERMAN DEMOCRATIC REPUBLIC INTEND TO PROMOTE RELATIONS IN ECONOMIC, CULTURAL AND OTHER FIELDS BY APPROPRIATE MEANS INCLUDING NEGOTIATIONS. AS ONE MEANS OF PROMOTING THESE OBJECTIVES, THEY AGREE THAT FOLLOWING THE ESTABLISHMENT OF DIPLOMATIC RELATIONS, BUT NOT LATER THAN ONE YEAR FROM THIS DATE, THEY WILL ENTER INTO NEGOTIATIONS ON THE ESTABLISHMENT OF OFFICES SEPARATE FROM THE RESPECTIVE CHANCERIES IN CITIES TO BE AGREED UPON. END TEXT. COMMENT. GDR HAS MADE CLEAR ITS WISH TO HOLD QUESTION OF ADDITIONAL OFFICES IN BERLIN AND OUTSIDE CAPITALS OPEN FOR DISCUSSION AT A LATER DATE. IT REJECTED A US PROPOSAL TO MAKE THIS SUBJECT AN INTEGRAL PART OF THE CURRENT NEGOTIATIONS. CONSULATES, AS OPPOSED TO TRADE AND/OR INFORMATION OFFICES, APPEAR TO BE TYPE OF OFFICE GDR PREFERS.

12. TENTH PARAGRAPH. CLAIMS REMAINS THE MOST DIFFICULT OUTSTANDING ISSUE. THE GDR HAS STATED SEVERAL TIMES THAT

THE GDR MET ITS OBLIGATIONS IMPOSED BY POTSDAM AND THAT IT  
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HAD ENACTED PROGRAMS GRANTING CERTAIN ADVANTAGES TO THOSE  
WHO SUFFERED UNDER NAZISM. GDR ARGUED THAT THESE FACTS  
REMOVE OBLIGATION FOR A GENERAL SETTLEMENT WITH PERSE-  
CUTEES AS SUGGESTED BY US. GDR DELEGATION MAINTAINED THAT

IT HAD NO INSTRUCTIONS PERMITTING IT TO ENTER INTO A  
DIALOGUE WITH THE WORLD CONFERENCE ON JEWISH MATERIAL  
CLAIMS. IT HAS AGREED THAT CLAIMS BY PERSONS WHO WERE  
AMERICAN CITIZENS AT THE TIME OF LOSS WOULD BE A PROPER  
SUBJECT FOR DISCUSSION IN A CLAIMS NEGOTIATION, AND HAS  
HINTED THAT GDR MIGHT ALSO ACCEPT CLAIMS FOR THOSE NOW  
US CITIZENS WHO HAD OTHER NATIONALITY AT TIME CLAIMS  
Arose. US REPS HAVE FOR THREE CONSECUTIVE DAYS EMPHASIZED  
IMPORTANCE US ATTACHES TO THIS ISSUE, NECESSITY OF GDR  
INITIATING DIALOGUE OF SOME SORT WITH PERSECUTEE GROUPS  
AND MORAL AS OPPOSED TO STRICTLY MATERIAL NATURE OF PRO-  
BLEM. PROPOSED US TEXT FOLLOWS: BEGIN TEXT. FOLLOWING  
THE ESTABLISHMENT OF DIPLOMATIC RELATIONS AND THE OPENING  
OF EMBASSIES, UPON THE REQUEST OF EITHER SIDE, THE TWO  
GOVERNMENTS WILL ENTER INTO NEGOTIATIONS FOR THE SETTLE-  
MENT OF CLAIMS AND OTHER FINANCIAL AND PROPERTY QUESTIONS  
WHICH REMAIN UNRESOLVED, EACH GOVERNMENT BEING ENTITLED TO  
RAISE DURING THESE NEGOTIATIONS THE QUESTIONS IT WISHES TO  
HAVE DEALT WITH. INCLUDED ON THE AGENDA WILL BE: (A)  
AMERICAN PROPERTY UNDER GDR CONTROL WHICH HAS BEEN  
NATIONALIZED, SEQUESTERED, OR OTHERWISE TAKEN; (B)  
PROPERTY AND OTHER LOSSES SUFFERED BY AMERICANS PRIOR TO  
OR SINCE 1945 WHICH HAVE NOT OTHERWISE BEEN SETTLED; AND,  
(C) UNSETTLED PRE-WAR EXTERNAL DEBTS OF GERMANY AND OTHER  
PUBLIC AND PRIVATE INSTITUTIONS OR PERSONS. THE GDR WILL  
SEEK TO REACH A SETTLEMENT, AS SOON AS POSSIBLE, DIRECTLY  
WITH APPROPRIATE ORGANIZATIONS, OF QUESTIONS RELATING TO  
JEWISH AND OTHER VICTIMS OF NATIONAL SOCIALISM. END TEXT.  
COMMENT. GDR HAS REJECTED ANY ENUMERATION OF CATEGORIES  
OF CLAIMS AND REFERENCE TO GDR NEGOTIATIONS WITH APPROP-  
RIATE PRIVATE ORGANIZATIONS. US HAS EXPRESSED WILLINGNESS  
TO CONSIDER OTHER FORMULATIONS BUT GDR COUNTERPROPOSAL  
IN PRESENT FORM IS UNACCEPTABLE. GDR TEXT READS: "AT A  
TIME TO BE AGREED AFTER THE ESTABLISHMENT OF DIPLOMATIC  
RELATIONS AND THE OPENING OF EMBASSIES, THE TWO GOVERNMENTS  
WILL ENTER, IN THEIR MUTUAL INTEREST, INTO NEGOTIATIONS FOR  
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THE SETTLEMENT OF FINANCIAL AND PROPERTY QUESTIONS WHICH  
REMAIN UNSOLVED BETWEEN THE TWO STATES, EACH GOVERNMENT  
BEING ENTITLED TO RAISE DURING THESE NEGOTIATIONS THE QUES-  
TIONS IT WISHES TO BE DEALT WITH".

13. AT LUNCH JULY 19, GDR DEPUTY REP GEYER INQUIRED  
WHETHER HE COULD REPORT TO BERLIN THAT SECRETARY KISSINGER  
HAD PERSONALLY EXAMINED CLAIMS ISSUE AND HAD APPROVED US  
POSITION. DEPARTMENT REPRESENTATIVE STATED THAT SUCH A  
REPORT WOULD BE ENTIRELY ACCURATE. INGERSOLL

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